IN THE HIGH COURT OF JUDICATURE AT BOMBY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 7600 OF 2006

Mr. Gulab Rama Choudhari. ....Petitioner.

V/s

Deoram Kushaba Mahale ....Respondents.

Mr. M.S. Karnik for the Petitioner.

Ms. Smita Gajdhani for Respondent No.1.

CORAM: S.J. VAZIFDAR, J.
DATE : 24th January, 2007

P.C:

1. Rule. Rule returnable and heard forthwith.

2. The impugned order warrants no interference. However, one thing is clear that the agreement dated 11/3/1998 of which specific performance is sought is admitted. It is also registered. Therefore, pending the hearing and final disposal of the suit, respondent is restrained from disposing of, alienating, encumbering or creating any third party right, title or interest into or upon in respect of the said property.

3. The only disputed question is regarding possession. The impugned order records the fact that the petitioner has been shown to be in possession since 1999 to 1st October, 2002 by way of various documents except 7 X 12 Extract. In addition thereto, there is a document by which defendant admitted having handed over possession of the property. The defendant, however, contends that the transaction was merely a security arrangement and possession was not handed over. It is desirable if parties maintain status-quo as regards possession to avoid any conflict at the site. The Civil Judge, Senior Division, Niphad is requested to appoint an Officer of the Court to make a report, indicating factors which would establish as to which of the parties is in possession of the land. Parties shall maintain status- quo initially as per the report. Parties shall be entitled to file objections to the report and make an appropriate application before the trial court, if necessary. The cost of making the report shall be borne by both the parties equally at the first instance and thereafter subject to further orders by the trial court.

4. Rule is mad absolute accordingly.

5. All parties are requested to act on an ordinary copy of this order duly authenticated by the Sheristedar/Private Secretary.